APPEAL NO. 010171

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 4, 2001. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury is not a producing cause of the claimant's right rib cage injury, and that the claimant is not entitled to supplemental income benefits (SIBs) for the fourth, fifth, sixth, and seventh quarters. In his appeal, the claimant asserts that those determinations are against the great weight of the evidence. In addition, the claimant contends that the hearing officer erred in admitting a decision of the State Office of Administrative Hearings (SOAH) in a medical dispute hearing. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's compensable injury of _____, is not a producing cause of his right rib cage injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165. The hearing officer noted that the medical evidence offered did not establish the causal connection between the claimant's prior thoracic surgery and his rib condition that necessitated the August 15, 2000, right rib resection and excision of a neuromuscular bundle. There was conflicting evidence on the causation issue and it was a matter for the hearing officer to resolve the conflicts and to determine what facts the evidence had established. The hearing officer was acting within her role as the fact finder in determining that the claimant did not sustain his burden of proving that his right rib cage injury was a direct and natural consequence of his compensable injury. Nothing in our review of the record indicates that the hearing officer's determination that the compensable injury is not a producing cause to the right rib cage injury is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb that determination on appeal. Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant contends that the hearing officer erred in admitting a SOAH decision concerning a preauthorization dispute for the previously mentioned surgery to resect the right rib. In that decision the SOAH administrative law judge determined that the claimant did not sustain his burden of proving that the pain he was experiencing in his rib cage was reasonably related to his compensable injury or that the proposed procedure was medically necessary; thus, the preauthorization request was denied. The claimant contends that the hearing officer erred in admitting the SOAH decision because it was prejudicial in that it resolved the compensability issue, a matter beyond the jurisdiction of the SOAH judge. We cannot agree that the admission of the decision, if error, was reversible error because its consideration "was not reasonably calculated to cause and probably did not cause the

rendition of an improper judgment." Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the fourth, fifth, sixth, and seventh quarters. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee "has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work." The hearing officer determined that the claimant did not present a sufficient narrative and that other records show an ability to work. The hearing officer was acting within her province as the fact finder under Section 410.165(a) in determining that the reports stating that the claimant had no ability to work did not provide sufficient explanation as to how the claimant's compensable injury caused a total inability to work and that there were other records that showed an ability to work. Nothing in our review of the record demonstrates that the hearing officer's determination that the claimant had some ability to work in the qualifying periods for the fourth, fifth, sixth, and seventh quarters is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. As such, we will not disturb that determination on appeal. Pool, *supra*; Cain, *supra*. The claimant acknowledged that he did not look for work in the relevant qualifying periods and, as such, the hearing officer did not err in determining that the claimant is not entitled to SIBs for the quarters at issue.

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Philip F. O'Neill
Appeals Judge